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No. 95-1293

In the Supreme Court of the United States

OCTOBER TERM, 1995

TARGET SPORTSWEAR, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the delegation of authority to the President contained in Section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, includes the authority to issue rules of origin for textile products manufactured or processed both in an insular possession of the United States and in a foreign country.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 70 F.3d 604. The opinion and order of the Court of International Trade (Pet. App. 10a-31a) are reported at 875 F. Supp. 835.

JURISDICTION

The judgment of the court of appeals was entered on November 17, 1995. The petition for a writ of certiorari was filed on February 15, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Section 204 of the Agricultural Act of 1956, 7 U.S.C. 1854, grants the President the authority to

negotiate textile trade agreements with foreign governments, and to issue regulations "to carry out any such agreement." The President has exercised that authority by negotiating and entering into bilateral and multilateral trade agreements with foreign governments that, *inter alia*, establish quotas on the amounts of particular textile products that may be imported into the United States.

In order to supervise the implementation of those agreements, the President established the Committee for the Implementation of Textile Agreements (CITA).[1] He also instructed the Commissioner of Customs to "take such actions as [CITA], acting through its Chairman, shall recommend to carry out all agreements and arrangements entered into by the United States pursuant to Section 204 * * * with respect to the entry, or withdrawal from warehouse, for consumption in the United States of textiles and textile products." Exec. Order No. 11,651, 3A C.F.R. 152 (1972 comp.).

On May 9, 1984, the President issued an Executive Order directing the Secretary of the Treasury to issue regulations covering textiles and textile products subject to Section 204 of the Agricultural Act of 1956. Exec. Order No. 12,475, 3 C.F.R. 203 (1984 comp.). The Executive Order mandated that the new regulations "shall include * * * clarification in, or revisions to, the country of origin rules for textiles and textile products subject to Section 204 in order to

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[1] CITA is composed of representatives of the United States Trade Representative and the Departments of State, the Treasury, Commerce, and Labor. Exec. Order No. 11,651, 3A C.F.R. 152 (1972 comp.).

avoid circumvention of multilateral and bilateral textile agreements." *Ibid.*

In response to that directive, the Secretary of the Treasury, through the United States Customs Service, issued regulations providing rules of origin for textiles and apparel, 19 C.F.R. 12.130 (1985). Paragraph (b) of the regulations provides that a textile or textile product manufactured or processed in more than one locale shall be a product of the place in which "it last underwent a substantial transformation," except as provided in paragraph (c). 12 C.F.R. 12.130(b) (1985).[2] Subparagraph (c) sets out an exception to the "substantial transformation" test under which "any product of the U.S. which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, * * * may not, upon its return to the U.S., be considered a product of the U.S." 19 C.F.R. 12.130(c) (1986), now codified at 19 C.F.R. 12.130(c)(1).

Until 1993, textile products that were last substantially transformed within an insular possession of the United States[3] were considered to be products of that insular possession for purposes of the import quota rules. In April 1993, however, the Customs Service promulgated an interim regulation that revised the

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[2] Under the regulation, a textile or textile product is considered to have undergone a "substantial transformation" if it has been "transformed by means of substantial manufacturing or processing operations into a new and different article of commerce." 19 C.F.R. 12.130(b) (1985).

[3] Insular possessions are island territories of the United States, including Guam and the United States Virgin Islands. See *In re Rothstein*, 884 F.2d 490, 491 n.2 (9th Cir. 1989); *Black's Law Dictionary* 720 (5th ed. 1979); see also 48 U.S.C. 1392-1408e.

rules of origin for textiles and textile products that were produced in an insular possession and then subjected to processing in a foreign country or territory. 58 Fed. Reg. 19,347 (1993) (codified at 19 C.F.R. 12.130(c)(2) (1995)). Under the interim regulation, such products are treated as products of the foreign country in which they were processed for purposes of the quotas set out in that country's textile trade agreement with the United States.[4] As a result, garments that were cut in an insular possession and assembled in a foreign country are now treated the same as garments cut in the United States and assembled in a foreign country: both are considered products of the foreign country for import quota purposes. 19 C.F.R. 12.130(c)(1) and (2); Pet. App. 6a-7a.

2. On January 20, 1989, the United States entered into a bilateral textile trade agreement with the Dominican Republic that limits the quantities of certain textile products that may be imported into the United States. As relevant here, the agreement establishes a quota on the number of men's and boy's wool suits from the Dominican Republic that may be

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[4] The interim regulation provides:

> Unless otherwise required by law, the rules of origin applicable to products of the U.S. shall also apply to products of insular possessions of the U.S. Accordingly, notwithstanding paragraph (b) of this section, for purposes of section 204, Agricultural Act of 1956, as amended, products of insular possessions of the U.S., if imported into the U.S. after having been advanced in value, improved in condition, or assembled, outside the insular possessions shall not be treated as products of those insular possessions.

19 C.F.R. 12.130(c)(2) (1995).

imported to the United States. The Dominican Republic agreed to control the volume of covered exports by the issuance of export visas. Pet. App. 18a.

3. Petitioner imports suits from the United States Virgin Islands (an insular possession of the United States, see note 3, *supra*) to the United States. With regard to the products at issue here, petitioner's affiliate oversaw the cutting and joining of fabric into garment pieces in the Virgin Islands, then shipped all components and suit parts to the Dominican Republic for assembly and sewing. The unfinished, assembled suits were then returned to the Virgin Islands, completed, and shipped to the United States. Pet. App. 17a.

On December 9, 1993, petitioner attempted to bring into the United States 12 suits produced through the method described above.[5] United States Customs officials, acting pursuant to the interim regulation, refused to allow the suits into this country without a textile export visa issued by the Dominican Republic. Pet. App. 3a, 18a. Petitioner then brought this suit in the United States Court of International Trade, challenging the validity of the interim regulation.

4. The Court of International Trade granted summary judgment for the United States. The court agreed with petitioner that the President's exercise of statutory authority in matters concerning

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[5] On January 13, 1987, seven years before the promulgation of the interim regulation, the Customs Service had issued to petitioner a ruling letter in which the Service concluded that petitioner's manufacturing operations in the Virgin Islands resulted in a "substantial transformation" of its textile products, and that petitioner's assembly operations in the Dominican Republic did not constitute a "substantial transformation." Pet. App. 18a.

international trade must be within the scope of that authority and comply with such procedures as Congress may prescribe. Pet. App. 19a. It concluded, however, that Section 204 "imposes no procedural requirements or limitations upon the President's implementation of the United States' textile program." Pet. App. 20a. Accordingly, the court held, "[a]ll that the Government must do is 'point to the proper authorizing provision and [show that the action taken was] rationally related to the provision's objective.'" *Ibid.* (quoting *American Ass'n of Exporters and Importers* v. *United States*, 583 F. Supp. 591, 598 (Ct. Int'l Trade 1984), aff'd, 751 F.2d 1239, 1247 (Fed. Cir. 1985)).

The court found that the interim regulation "is clearly relevant to the implementation, enforcement and effectiveness of existing textile agreements in achieving their goal of limiting textile imports into the United States." Pet. App. 20a. Specifically, the court found that the interim rules of origin treat products of insular possessions that are sent abroad for processing the same as United States products that receive foreign processing. *Ibid.* In so doing, "the interim regulation * * * meets the objective of the statute and [c]ongressional policy of implementing existing trade agreements by precluding circumvention of quantitative restrictions on textile imports." *Ibid.*[6]

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[6] The court accepted the government's contention that

> [i]f section 204 only authorized the issuance of regulations governing imports of textile products which have been last substantially transformed in a foreign country and exported from that country, as [petitioner] argues * * *, soon every insular possession would be used as a platform

The court also rejected petitioner's contention that the interim regulation impermissibly imposes quotas on the textile products of insular possessions. Because the President has authority to recognize exceptions to the "substantial transformation" test for country-of-origin determinations, the regulation validly defines petitioner's goods as products of the Dominican Republic, subject to that country's export quotas. Pet. App. 27a.

5. The court of appeals affirmed. Pet. App. 6a-9a. It agreed with the Court of International Trade that the President acts within his authority under Section 204 where his action is "relevant to the enforcement of some existing textile agreement." Pet. App. 7a (quoting *American Ass'n of Exporters and Importers* v. *United States*, 751 F.2d 1239, 1247 (Fed. Cir. 1985)). Because the interim regulation "is relevant to the enforcement of the bilateral agreements implementing the textile program, such as the textile agreement with the Dominican Republic," the regulation serves to "carry out" bilateral agreements entered into pursuant to Section 204. Pet. App. 8a.

The court of appeals rejected petitioner's contention that the President lacks authority to depart from the "substantial transformation" test. Observing that Section 204 is a broad delegation of power with respect to foreign commerce, the court concluded that

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> for importing textiles into the United States in order to evade quantitative restrictions contained in bilateral trade agreements. While that might foster the economic development of the insular possessions, it would obviously blunt 'the common purpose of Section 204 * * * and the bilaterals . . . to limit imports of textiles' into the United States so as to protect the domestic textile industry.

Pet. App. 20a-21a (quoting Gov't CIT Br. 20).

"[t]here is no persuasive evidence, in either the text or the legislative history surrounding § 204, establishing that Congress intended to grant the President this broad authority, but at the same time to withhold from him the power to promulgate, when appropriate, a country of origin rule that differs from the customary test." Pet. App. 8a.

ARGUMENT

Petitioner does not dispute that the Customs Service's country-of-origin regulations are authorized by Section 204 insofar as they are "relevant to the enforcement of some textile agreement." *American Ass'n of Exporters*, 751 F.2d at 1247. Petitioner contends, however, that, because the goods at issue in this case "did not originate in the Dominican Republic (or, in fact, in any foreign country) [19 C.F.R.] 12.130(c)(2) is not relevant to the enforcement of any existing textile agreement." Pet. 10.

As the courts below recognized (Pet. App. 8a, 20a), the Customs Service promulgated the interim regulation at issue here in order to ensure proper implementation and enforcement of the United States' textile trade agreements with foreign countries such as the Dominican Republic. By defining textile goods that are cut in an insular possession then assembled in the Dominican Republic as products of the Dominican Republic for quota purposes, the interim regulation ensures that insular possessions are not used to circumvent the quotas contained in the textile agreement with the Dominican Republic. See Pet. App. 25a-26a; Exec. Order No. 12,475, 3 C.F.R. 203 (1984 comp.) That purpose is clearly "relevant to the enforcement of some textile agreement," *American*

Ass'n of Exporters, 751 F.2d at 1247, and, therefore, falls well within the President's statutory authority.

Petitioner's contention (Pet. 8) that the interim regulation impermissibly imposes quotas on the products of an insular possession merely begs the question presented in this case. Because Section 204 authorizes the President to promulgate rules defining the country of origin of textiles and textile products, and because petitioner's suits were "imported into the U.S. after having been * * * assembled, outside [of an] insular possession[]," 19 C.F.R. 12.130(c)(2), the suits are products of a foreign nation, not of an insular possession, and require a textile export visa issued by the nation in which the assembly occurred.

Petitioner argues, in essence (Pet. 9 & n.15), that the President lacks authority to recognize exceptions to the "substantial transformation" test because case law applying that test predates the interim regulation. Petitioner cites no case, and we are aware of none, in which a court has held that the President may not depart from the substantial transformation inquiry in order to ensure proper implementation of foreign trade agreements negotiated pursuant to Section 204. As the Court of International Trade recognized (Pet. App. 22a), the Customs Service's country-of-origin regulations were formulated in part to avoid reliance on case-by-case adjudication. See, *e.g.*, *Mast Industries, Inc.* v. *United States*, 822 F.2d 1069, 1073 (Fed. Cir. 1987) ("This [country-of-origin] case law is considered the source of the evil the regulation was meant to correct, and thus it is something to avoid, not to seek out for guidance."). The President did not exceed his authority under Section 204 by recognizing particularized exceptions to the

substantial transformation test based on past enforcement experience.[7]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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APRIL 1996

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[7] Petitioner includes among its "Questions Presented For Review," the question "[w]hether the authority delegated to the President under section 204 grants unlimited authority to the President to restrict imports of textile articles into the United States and, therefore, violates Article 1, Section 8, Clause 3 of the Constitution of the United States." Pet. i. Petitioner fails to discuss that question in the body of its petition. Moreover, because the question was neither presented to, nor addressed by, the court of appeals, it should not be considered by this Court. See *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 38-39 (1989).